



Comptroller General
of the United States

Washington, D.C. 20548

15-4371
954305

Decision

Matter of: Hallmark Properties

File: B-260496.2

Date: May 30, 1995

DECISION

Hallmark Properties protests the General Services Administration's (GSA) refusal to consider an offer from it in response to solicitation for offers (SFO) No. 93219 for the lease of office and related space to house the Department of Agriculture in Davis, California. We dismiss the protest as untimely.

GSA advertised the lease requirements in the Sacramento Bee on June 16, 1994. The advertisement included the following restriction:

"The space must be located in or near the city of Davis, California in the area bounded by:
NORTH: Russell Boulevard, 5th Street
EAST: Southern Pacific Transportation Company railroad tracks
SOUTH: Interstate 80
WEST: Highway 113"

The geographical restriction was included in the SFO when it was issued on January 26, 1995.

Hallmark filed its initial protest in our Office on February 21, 1995. We interpreted the protest as against GSA's rejection of Hallmark's offer, and dismissed the protest as untimely because it was filed more than 10 working days after Hallmark received from the contracting officer an explanation of why GSA would not consider Hallmark's offer. Hallmark contends that we misinterpreted its protest. Hallmark states that it is really protesting a solicitation impropriety (*i.e.*, that the SFO's geographical restriction is overly restrictive). Since its initial protest was filed in our Office before the March 16 closing date for receipt of initial offers, Hallmark argues that the protest is timely under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1995). We note that, in its initial protest letter to our Office, Hallmark specifically apologized for filing its protest "after the time limit for appeals had passed." In any event, Hallmark's protest to

our Office is clearly untimely even if it is considered as a protest against the SFO restriction.

The record contains a number of letters from Hallmark to GSA and indicates that there were several telephone calls as well. In its first letter, dated July 14, 1994, Hallmark asked GSA to consider a parcel of land¹ it believed would meet the Department of Agriculture's "stated preferences." However, by letter of August 17, Hallmark complained to GSA that its offered parcel had been excluded and asked how it could appeal the geographical restriction. On September 14, Hallmark again wrote to GSA requesting information regarding appeal of the restriction and urging GSA to allow it to give its best offer. By letter of October 20, Hallmark asked GSA who had decided the geographical boundaries, what the criteria for that determination were, and again asked how to appeal the exclusion of its offered tract. Hallmark wrote to the contracting officer requesting information on appealing the geographical restriction on at least two additional occasions (November 3, 1994, and January 20, 1995).

GSA considered the August 17 letter and those that followed to be a protest of the procurement's delineated area, and by letter of January 26, 1995, the contracting officer denied Hallmark's protest, explained GSA's rationale for the restriction, and sent Hallmark a copy of the General Accounting Office's Bid Protest Regulations. The letter was mailed to Hallmark on January 27 and a second copy was telecopied to Hallmark on January 31.²

The gist of the letters Hallmark sent to GSA was that Hallmark was unhappy with the SFO's geographical restriction and GSA's refusal to consider the site proposed by Hallmark. A letter does not have to explicitly state that it is intended as a protest for it to be considered one. See Reeves Brothers, Inc; H. Landau & Co., B-212215.2; B-212215.3, May 2, 1984, 84-1 CPD ¶ 491. Where, as here, the letters expressed dissatisfaction with the procurement's restriction and requested corrective action (i.e., consideration of Hallmark's offer), we think the letters showed sufficient expressions of Hallmark's intent to protest. Id. Hence, even though the word "protest" was not

¹The parcel was a vacant lot upon which Hallmark proposed to construct a suitable building.

²The record includes a telecopier receipt showing that the message was received by Hallmark on January 31.

used by Hallmark, we think that the letters were properly construed by GSA as an agency-level protest.³

Where a protest initially has been filed with a contracting activity, any subsequent protest to our Office must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action" to be considered timely. 4 C.F.R. § 21.2(a)(3) (1995). Our Bid Protest Regulations define "adverse agency action" as any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. 4 C.F.R. § 21.0(f). Here, the record shows that the contracting officer's January 26 letter denying Hallmark's protest, in fact, was received by Hallmark no later than January 31. As Hallmark's initial protest to our Office was not filed until February 21--more than 10 working days after receipt of the agency's denial of its protest--the protest to this Office was untimely.⁴

The protest is dismissed.



John Van Schaik
Acting Assistant General Counsel

³It is also apparent from the correspondence that GSA told Hallmark on a number of earlier occasions that it would not consider Hallmark's offered property. A protester must file a protest based upon the agency's refusal to consider its offer within 10 working days after being so notified by the agency, and the protester's continuing attempts to convince the agency to reconsider its position regarding the acceptability of the offer do not toll our timeliness requirements. See American Productivity & Quality Center, B-242703, Jan. 18, 1991, 91-1 CPD ¶ 60.

⁴Hallmark also argues that the contracting officer should have provided a copy of our Regulations to it sooner. However, since our Regulations are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive knowledge of their contents, including our timeliness requirements. See Fisons Instruments--Recon., B-254939.2, Dec. 8, 1993, 93-2 CPD ¶ 310. Therefore, this argument provides no reason to consider Hallmark's untimely protest.